



Zoning Modification Petition No. 201404629

PROPERTY INFORMATION

Address, Land Lot, and District	455 Abernathy Road
Council District	Land Lot 73, 17th District
Frontage	Approximately 349.49 feet of frontage along the south side of Abernathy Road.
Area	Approximately 6.13 acres
Existing Zoning and Use	Veterinary Clinic ; O-I (1985Z-092) (Office and Institutional District)
Overlay District	Suburban Overlay District
2027 Comprehensive Future Land Use Map Designation	Residential 2 to 3 units per acre (R2-3)
Proposed Zoning	O-I (1985Z-092) (Office and Institutional District)

APPLICANT/PETITIONER INFORMATION

Property Owner	Petitioner	Representative
Georgia Veterinary Specialist	Amanda Woodruff	Amanda Woodruff

Community Zoning Information Meeting
January 7, 2015

Mayor and City Council Hearing
February 17, 2015

INTENT

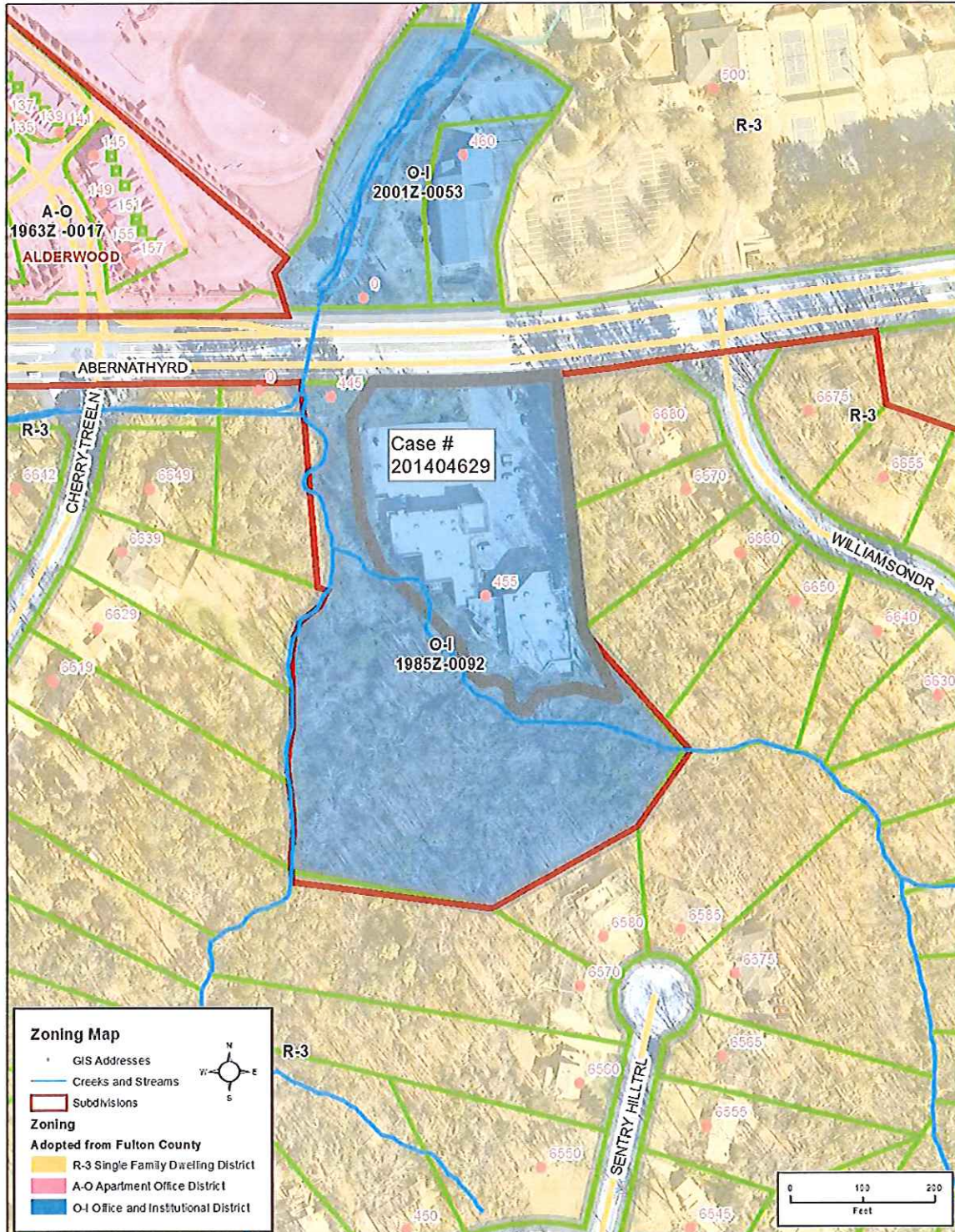
To modify condition 2.a and 3.b of Fulton County Rezoning Z85-092, to construct a construct additional parking and access ramp underneath an existing parking deck with concurrent variances for relief from 109.225 (a) (1) & (2) of the Stream Buffer Protection Ordinance.

DEPARTMENT OF COMMUNITY DEVELOPMENT RECOMMENDATION

201404629- APPROVAL CONDITIONAL

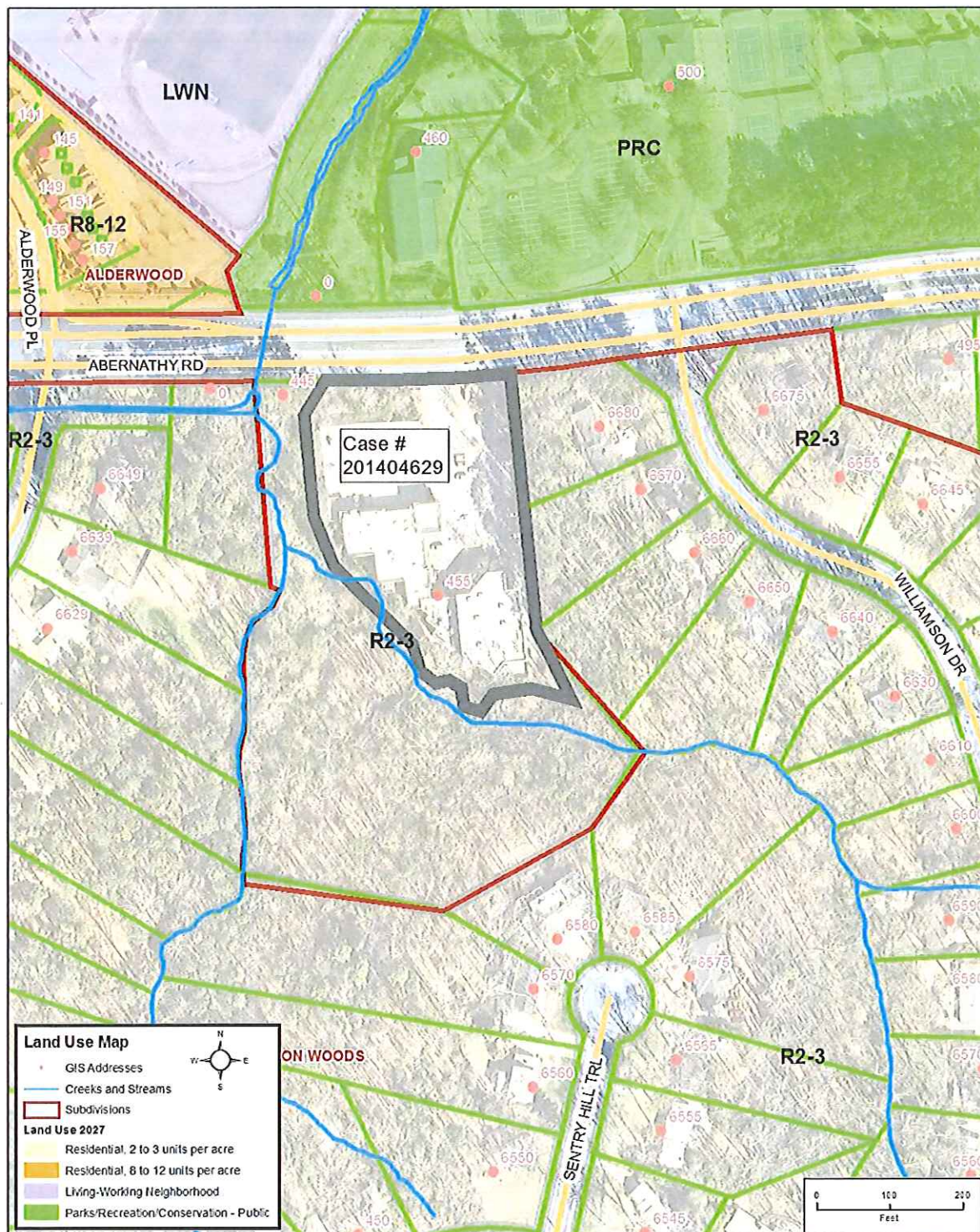
Zoning Map

455 Abernathy Road



Future Land Use Map

455 Abernathy Road



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L. LEE DAILEY
(1939-2013)

**Letter of Appeal and Reservation of Constitutional Rights
for Application requested by Amanda Woodruff**

This statement is intended to comply with the application procedures established by The City of Sandy Springs, Georgia for submittal of applications for zoning modification with concurrent variances, as required by the Zoning Ordinance of the City of Sandy Springs, Georgia (the "Zoning Ordinance"), the City of Sandy Springs Zoning Modification and Variance Application, and other City of Sandy Springs Ordinances and Standards, and to reserve all constitutional and statutory protections available to Amanda Woodruff (the "Applicant"). The Applicant has filed a timely application, has provided all required information and has submitted the appropriate application fees. The application meets all judicial and statutory requirements for approval.

The Applicant asserts the statements contained in the application package submitted, including any requested variances, incorporated herein by reference, and as may be amended (collectively, the "Application"), as if such were fully stated herein. The Applicant incorporates all statements made in the Application by Amanda Woodruff as its letter of appeal required by the City of Sandy Springs. All references to code sections of the Zoning Ordinance are numbered in accordance with Municode enumerations.

The Applicant seeks to develop an underground parking area underneath an existing parking deck. This additional parking is necessary to facilitate adequate customer and employee parking for Blue Pearl Veterinary Specialists, which operates its business on the subject property. In order to provide access to the proposed lower parking deck, an access drive between the parking deck and the right-of-way of Abernathy Road must be installed.

This area between the parking deck and the right-of-way of Abernathy Road is subject to Zoning Conditions #2(a) & #3(b) of Fulton County Zoning Petition No. Z-85-92 FC, which currently state:

- 2(a) *To the site plan received by the Department of Environment and Community Development on February 18, 2005. Said site plan is conceptual only and must meet or exceed the requirements of the Zoning Resolution and these conditions prior to the approval of a Land Disturbance Permit. Unless otherwise noted herein, compliance with all conditions shall be in place prior to the issuance of the first Certificate of Occupancy.*
- 3(b) *Provide a 40 foot wide landscape strip outside of the new dedicated right-of-way of Abernathy Road.*

In order to accommodate the access drive, the proposed access drive must be located within the interior 20 feet of the required landscape strip. For this reason, the Applicant requests that

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**City Of Sandy Springs
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Zoning Condition #3(b) be modified to read as follows:

- 2(a) *The property must be developed substantially as depicted on the site plan, dated _____ . Said site plan is conceptual only and the development must meet or exceed the requirements of the Zoning Ordinance and these conditions.*
- 3.(b) *Provide a 20 foot wide landscape strip outside of the existing right-of-way of Abernathy Road.*

In addition, a small portion of the proposed access drive area is encumbered by an impervious cover setback from a stream. A variance the impervious cover setback is required to facilitate the proposed access drive. In this regard, the subject property's shape, topography and other physical conditions existing at the time of the adoption of the Ordinance prevent the proposed land development unless a variance is granted. In addition, unusual circumstances exist that, when the minimal requirements of the Ordinance are strictly adhered to, create an extreme hardship upon the subject property and the property owner. The actions of the property owner have not created the conditions of hardship on the subject property.

The Application satisfies the standards listed in Stream Buffer Protection Ord. § 109-225 for the requested variance. In this regard, the Applicant asserts the following:

- **Variance Requested:** Stream Buffer Protection Ord. § 109-225(a)(2) - The Applicant requests a variance of 25 feet to encroach into the impervious cover setback, limited to the areas depicted on the site plan.
- **Criteria #1 – The shape, size, topography, slope, soils, vegetation and other physical characteristics of the property require the relief requested.** The shape, size, and topography of the subject property, and the resulting setbacks and buffers along the boundary lines and riparian bodies, substantially limit the buildable area of the subject property and necessitate placement of the access drive in the location proposed by the Applicant. Specifically, the topography slopes dramatically to the south of the Abernathy Road right-of-way. Unless the variance is approved as requested, neither the access drive nor the lower parking deck can be constructed.
- **Criteria #2 – The location of the stream and impervious cover setback affected necessitates the variance.** The location of the stream along the western boundary of the affected property and the resulting buffer and setback substantially limit the buildable area of the subject property and necessitate placement of the access drive in the location proposed by the Applicant.
- **Criteria #3 – The location of the impervious cover setback intrusion necessitates the variance.** The location of the stream along the western boundary of the affected property and the resulting buffer and setback substantially limit the

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buildable area of the subject property and necessitate placement of the access drive in the location proposed by the Applicant.

- **Criteria #4 – No alternative design is possible that would require less intrusion or no intrusion.** The topography of the subject property requires the access drive be the length proposed in order to satisfy design standards for grade and turning radii. Consequently, the length of the access drive necessitates encroachment of the access drive into the impervious cover setback as proposed by the Applicant. The requested variance is the minimum necessary to accommodate the proposed structures and allow the property to be developed in an economically feasible and physically practical manner.
- **Criteria #5 – The long-term and construction water quality impacts of the proposed variance would not cause a substantial detriment to the public good and surrounding properties.** The proposed setback encroachment will not cause substantial detriment to the public safety, health, or welfare of the public, nor will they be injurious to other property, as downstream water quality will be preserved in accordance with all applicable local and State regulations.
- **Criteria #6 – Issuance of the variance will be at least as protective of natural resources and the environment.** The proposed setback encroachment will not negate the intent of the Stream Buffer Protection Ordinance. If the proposed access drive were to continue through the impervious cover setback, such a crossing would be permitted without the need for a variance. However, because the access drive does not continue through the setback area, and instead turns into the proposed underground parking area, it has been determined a variance is required. The Applicant's proposed encroachment will not create a substantially greater area of impervious cover within the setback area than would a permitted stream crossing. All applicable local and State regulations will be complied with in order to preserve downstream water quality.

Refusal to grant approval of the Application, as requested by the Applicant, would impose a disproportionate hardship on the Applicant without accruing any benefits to any surrounding property owners. There is no reasonable use of the Subject Property under any other such use and no resulting benefit to the public from designation to any other use.

Any decision that would deny the Application, as requested by the Applicant, would be unconstitutional and illegal in that it would constitute a taking of the Applicant's property rights without first paying fair, adequate and just compensation, in violation of Article I, Section I, Paragraph I and Article I, Section III, Paragraph I of the Constitution of the State of Georgia and the Fifth and Fourteenth Amendments to the Constitution of the United States, and a denial of due process and equal protection under the Constitution of the State of Georgia, Article I, Section I, Paragraph I, and Article I, Section I, Paragraph II and the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the Constitution of the United States. Any decision

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that would deny the Application, as requested by the Applicant, would also be a violation of the Constitution of the State of Georgia, Article IX, Section II, Paragraph I, that "counties pass clearly-reasonable ordinances."

A refusal by the City of Sandy Springs to approve the Application, as requested by the Applicant, thereby prohibiting the only viable economic use of the Subject Property, would be unconstitutional and would discriminate in an arbitrary, capricious and unreasonable manner between the Applicant and the owners of similarly situated property in violation of Article I, Section I, Paragraph II of the Constitution of the State of Georgia and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. Furthermore, a decision that would deny the Application, as requested by the Applicant, would be an unreasonable application of local land use authority which bears no relationship to the public health, safety, morality or general welfare of the public and would constitute an arbitrary and irrational abuse of discretion by the City of Sandy Springs City Council in violation of Article I, Section I, Paragraph I of the Constitution of the State of Georgia and the Due Process Clause of the Fifth and Fourteenth Amendments to the Constitution of the United States. The Applicant maintains that a refusal to approve the Application, as requested by the Applicant, would be an abuse of discretion under the power granted to local governments by the Georgia Constitution and the Zoning Procedures Law, O.C.G.A. § 36-66-1 et seq.

In filing this statement, the Applicant hereby reserves all rights and remedies available to it under the Constitution of the United States, the Constitution of the State Georgia, all applicable federal, state, and local laws and ordinances, and in equity.

Accordingly, the Applicant respectfully requests that the Application, as requested by the Applicant, be approved. The Applicant also reserves the right to amend this statement and the Application by supplementing further responses and documents.

Sincerely,



Ethan Underwood, Attorney for the Applicant

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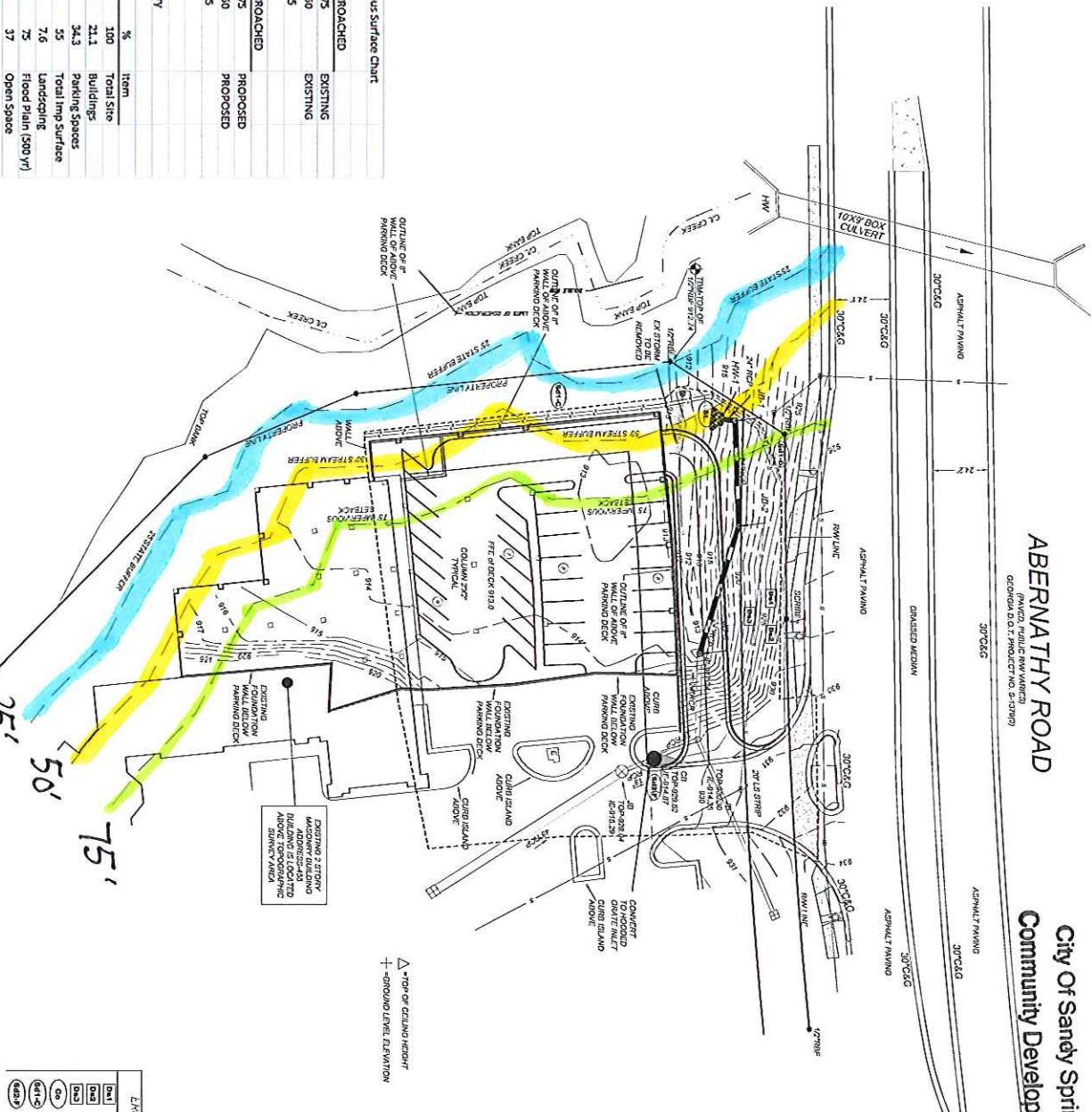
OCT 7 2014

City of Sandy Springs
Community Development

ABERNATHY ROAD

(MAYOR PUBLIC PROJECT)
GEORGINA DISTRICT NO. 5 (DMP)

Magnetic North



GIS Variance Request Impervious Surface Chart

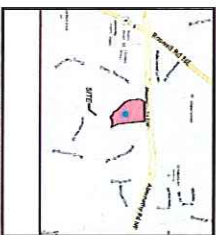
Area in SQ	BUFFER ENCROACHED
7687.5	50-75
798	20-50
0	0-25

Area in SQ	BUFFER ENCROACHED
656.8	50-75
27.9	20-50
0	0-25

Development Statistics Summary

Area (ac)	Total Site (ac)	%	Item
2.552	2.552	100	Total Site
0.339	2.552	21.1	Buildings
0.865	2.552	34.3	Parking Spaces
1.404	2.552	55	Total Imp Surface
0.194	2.552	7.6	Landscaping
1.914	2.552	75	Flood Plain (500 yr)
0.554	2.552	37	Open Space

LOCATION MAP
NOT TO SCALE



CONCLUSIONS

1. The proposed development is consistent with the Comprehensive Zoning Ordinance, specifically the provisions for the use and intensity of the proposed development.
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EROSION CONTROL	
641	TEMPORARY EROSION CONTROL MEASURES
642	PERMANENT EROSION CONTROL MEASURES
643	TEMPORARY EROSION CONTROL MEASURES
644	PERMANENT EROSION CONTROL MEASURES



GRAPHIC SCALE: 1" = 100'

Land Lot 73, 17 District, Fulton County, GA
SITE PLAN for
Blue Pearl Veterinary Specialists

Woodruff & Associates
348 Village Road, Grayson, GA 30012
Phone 404-530-5111 / Fax 404-530-5119

SEAL
Professional Engineer
Fulton County, Georgia
No. 12345
Date: 10/1/2014
Scale: 1" = 100'